

REMARKS

Claim Status

Claims 1-20 are currently under consideration.

Claims 1-3, 5 and 14-20 are cancelled without prejudice.

Claims 4 and 6 are to be amended to change the range of high molecular weight polymer. Support for this proposed amendment is found on p. 15 lines 5-13 of the specification.

Claims 4 and 6 are amended to delete the limitation regarding the charge density of the pendant groups. Support for this proposed amendment is found in claims 4 and 6 as originally filed.

Claims 4 and 6 are further proposed to be amended to include the limitation that the composition exhibits consistent spray fracture. Support for this amendment is found on p. 3, lines 10-14 of the specification.

It is believed that these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Interview Summary

Applicant thanks Examiner Cordray for taking the time to interview the cases via telephone on March 27, 2008 at 10 AM. The prior art and proposed claim amendments were discussed. Additionally, the submission of a declaration to put on record the improvements of the presently claimed invention over the prior art was discussed. No formal resolution was reached.

Rejection Under 35 USC §103(a) Over WO 02/48458 in View of U.S. 3,624,019

Claims 4 and 6-13 have been rejected under 35 USC §103(a) as being unpatentable over WO 02/48458 (hereinafter “Barnholtz”) in view of U.S. Pat. No. 3,624,019 (hereinafter “Anderson”). This rejection is traversed on the grounds that, as amended, Hill in view of Long fails to satisfy the requirements for a showing of obviousness as established by Graham v. John Deere Co., 381 U.S. 1, 148 USPQ 459 (1966). The four Graham factors are: (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the difference between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. This set of criteria was affirmed in KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007).

As presented, Claims 4 and 6-13 recite, *inter alia*, that the composition exhibits consistent spray fracture. The inventor surprisingly discovered that the claimed invention provided improved sprayability over the invention of Barnholtz. (Specification, p. 2, line 28 through p. 3, line 13). In particular, during application on a plant-scale operation, Applicant noticed a marked improvement over the composition of the prior art. Applicant respectfully directs the Office to the attached Declaration (Declaration, p. 2, ¶¶ 1-3) which provides details as to the improvements in the claimed composition when compared to the composition of the prior art.

Further, Applicant contends that while Anderson discloses inversion of a water-in-oil emulsion into water for the rapid dissolution of polymer, Anderson simply provides an alternative means of solubilizing polymer and, even under the more rigorous standard set forth in KSR, does not rise to the level of making the claimed invention obvious. That is, an invention is not obvious where “old or well known” elements solve a different problem. Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1453, 221 USPQ 481 (Fed. Cir. 1984). Further, it is well-settled that it is improper to use the patent application as a basis for a motivation to combine or modify the prior art to arrive at the claimed invention. ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 221 USPQ 929 (Fed. Cir. 1984).

Applicant respectfully directs the Office to the example of adding the polymer to the composition set forth in Barnholtz. This example discloses heating the solution and

adding the polymer. (Barnholtz, p. 35, lines 14-18). Applicant also respectfully directs the Office's attention to p. 2, ¶ 3 of the attached Declaration. One of skill in the art would have considered the method for adding polymer in Barnholtz to be satisfactory. Anderson discloses the ability to dissolve polymers which normally would clump or remain as agglomerates on contact with water. (Anderson, Col. 1, lines 20-23) However, neither piece of art discloses any benefits regarding allowing all the polymers in a solution to reach the same conformational state. This is the unique problem that was recognized, and solved, by the inventor of the claimed invention. (Specification, p. 2, lines 28-35). Applicant respectfully submits that Barnholtz and Anderson amount to nothing more where old elements that were used by the Applicant to solve a new problem. Additionally, Applicant respectfully submits that combining the references would require the improper reliance on the Applicant's specification for motivation.

In light of the preceding argument and included Declaration, Applicant respectfully contends that the *prima facie* case of obviousness is not met and respectfully requests that Claims 4 and 6-13 be allowed over the 35 U.S.C. §103(a) rejection.

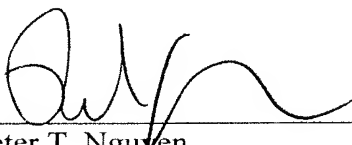
Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. §103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 4 and 6-13 is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By 
Peter T. Nguyen
Registration No. 58,282
(513) 634-4268

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Customer No. 27752